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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/595,557	06/14/2000	Robert C. Dixon	226/132	1401

7590 01/26/2006

MICHAEL A. DeSANCTIS  
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP  
12400 WILSHIRE BOULEVARD  
SEVENTH FLOOR  
LOS ANGELES, CA 90025-1026

EXAMINER

TRAN, PABLO N

ART UNIT	PAPER NUMBER
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2685

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/595,557	<b>Applicant(s)</b> DIXON, ROBERT C.	
	<b>Examiner</b> Pablo N. Tran	<b>Art Unit</b> 2685	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-6, 12-20, 22, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-6, 12-20, 22, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### **Reissue Applications**

1. The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.
2. In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.
3. Claims 2-6, 12-20, 22, and 24-25 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

\*Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant\*.

### ***Election/Restrictions***

4. Newly submitted claims 26-29 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

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Regarding claims 26-29, directed to a wireless communication system for communicating amongst a pattern of cellular communication cells wherein the pattern of cellular communication cells comprises a repeated pattern of classes of cells are arranged such that a cell from any one class is not adjacent another cell from a same class of cells and wherein the control station assigns a spread spectrum code for each corresponding class of cells.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 26-29 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zhang et al. ('comparisons of Channel-Assignment Strategies in Cellular Mobile Telephone Systems') in view of Comroe et al. (5,355,367).

As per claims 4 and 6, Zhang discloses a wireless communication system comprising a pattern of cellular radio communication cells and a base station

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dynamically assigned a first transmission frequency for transmitting in a first cell wherein the first transmission frequency is not assigned to any base station for transmitting to any cell in the pattern of cells adjacent to the first cell and the one or more user station each assigned a second transmission frequency to said base station wherein the second transmission frequency not being assigned to any user station in any cells in said pattern of cells adjacent to the first cell (see Zhang, section I, II A, II B, II C, especially II B, where it is clear that the subset A is assigned only to the first cells. The channels are allocated (see section I) within the subset A and are assigned amongst the base station (first frequency/downlink) and users (second frequency/uplink) within the first cell).

The modified communication system of Zhang does not specifically suggest the communication system using time division multiple access. However, Comroe et al. disclosed such channels allocation for use in time division multiplexing access communication system (col. 1/ln. 45-col. 2/ln. 5). Therefore, it would have been obvious to one of ordinary skill in the art to provide such communication system as taught by Comroe et al. to the communication system of Zhang et al. in order to improve capacity of the communication system.

As per claim 2, the modified communication system of Zhang teaches the first transmission frequency is from a first set comprised of a limited first predetermined number of frequencies, the second transmission frequency is from a second set comprised of a limited second predetermined number of frequencies, and the first set of frequencies is different than the second set of frequencies (see section I).

Regarding claim 3, the modified communication system of Zhang teaches all of the limitations of claim 2, and also discloses that the first predetermined number of frequencies is three and the second predetermined number of frequencies is three (see section I).

As per claim 5, the modified communication system of Zhang teaches all of the limitations of claim 4, and also discloses that the user station in the first cell are dynamically assigned the second transmission frequency (see sections II A, II B, and II C).

### ***Response to Arguments***

7. Applicant's arguments with respect to claims 4 and 6 have been considered but are moot in view of the new ground(s) of rejection.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

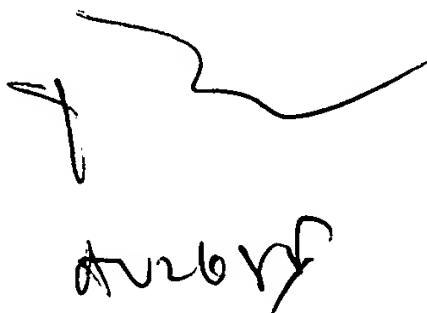
### **Conclusion**

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pablo Tran whose telephone number is (571)272-7898. The examiner normal hours are 9:30 -5:00 (Monday-Friday). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban, can be reached at (571)272-7899. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-directauspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**PABLO N. TRAN**  
**PRIMARY EXAMINER**

January 22, 2006

A handwritten signature in black ink, appearing to read 'Pablo N. Tran', is written below the printed name and title.